S.B. CIVIL WRIT PETITION NO.1919/2005

Gurpreet Singh & Anr. Vs. ADJ (FT) Anoopgarh and others.

Date : 4.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S.L. Jain, for the petitioners.

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Heard learned counsel for the petitioners.

It appears from the facts of the case that a suit for specific performance of contract dated 14.10.1993 was filed by the plaintiff/respondent. The defendants/petitioners took objection in the written statement about the admissibility of the agreement dated 14.10.1993 upon which the trial court framed the issues. Despite taking objection in the written statement, the document was tendered in evidence by the plaintiff and it was exhibited and the defendant cross examined the plaintiff. The plaintiff's evidence was closed by the trial court. Thereafter, the defendant submitted an application raising objection about admitting the document in question in evidence. The trial court by order dated 16.3.2005 rejected the petitioners' objection on the grounds inter alia that in view of the judgment of this Court delivered in the case of Mahendra Kumar vs. Smt. Manni Devi and ors. reported in 2001 (4) W.L.C. (Raj.) page 703, the objection about the admissibility of the document can be raised by the defendant only when he first admits the execution of the

document and another ground for rejecting is that the defendant did not raise the objection in time i.e. at the time of exhibiting the document and, therefore, the defendant cannot subsequently have right to raise objection. The trial court also observed that in view of Section 36 of the Stamps Act, once a document has been admitted, no objection about its admissibility can be entertained by the Court.

According to learned counsel for the petitioners, the court below committed serious error of law in holding that once the document has been admitted, the objection about insufficiency of stamps cannot be raised. It is also submitted that the court below has misread the law laid down by this Court. Learned counsel for the petitioners relied upon the judgment delivered in the case of Ganpat Mal Dhariwal vs. Sukhraj and another reported in 2002(1) W.L.C. (Raj.) page 299. According to learned counsel for the petitioners, the document in question is not being used for collateral purpose in this case because of the fact that the document is found for seeking specific performance of the contract and, therefore, in view of the judgment of this Court in case of Ganpat Mal Dhariwal (supra), document was not admissible in evidence.

I have considered the submissions of learned counsel for the petitioners.

Even according to learned counsel for the petitioners

himself, the defect of deficiency in payment of stamp duty is a curable defect and undisputedly, the document was admitted in evidence in the presence and in the knowledge of the petitioners themselves by the trial court. The petitioners knew it well that they took the plea of admissibility of document in evidence in the written statement itself and the trial court framed the issue, still they did not raise the objection in time.

Even if the Court could have demanded the stamp duty by impounding the document under Section 35 of the Stamps Act but has if not impounded the document as there was no objection of the petitioners at particular point of time, therefore, if the trial court rejected the objection by the impugned order, then that is only at the most an illegality subject to proving the case of the petitioner on the basis of legal pleas and the order under challenge cannot be said to be either exceeding jurisdiction or perverse to the extent so as to call for interference by this Court under Article 227 of the Constitution of India.

It will be relevant to mention here that if the argument of the petitioner is accepted that objection can be raised at the subsequent stage about admissibility of the document even after the document has been admitted, then the petitioner had a right to raise objection but that objection has been decided by the court below.

In view of the above discussion, I do not find any

reason to interfere in the impugned order while exercising supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya